

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

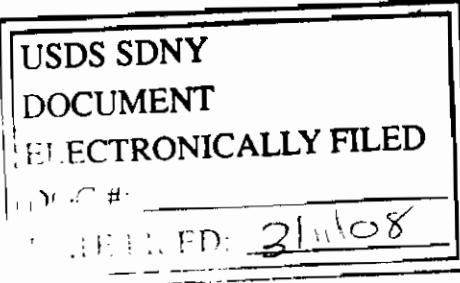
THE NEW YORK DISTRICT COUNCIL OF  
CARPENTERS PENSION FUND, *et al.*,

Plaintiffs,

-v-

KW CONSTRUCTION, INC., as Successor  
to KW GENERAL CONTRACTOR, INC.,  
and JOHN WHYTE, d/b/a KW  
CONSTRUCTION, INC., and JOHN  
WHYTE, individually,

Defendants.



No. 07 Civ. 8008 (RJS)  
ORDER

RICHARD J. SULLIVAN, District Judge:

On March 7, 2008, plaintiffs in the above-entitled action submitted an *ex parte* motion for an order of attachment of defendant John Whyte's assets pursuant to Rule 64 of the Federal Rules of Civil Procedure and § 6201(3) of New York Civil Practice Law and Rules. In order to invoke Section 6201(3) "it is incumbent upon [the plaintiff] to demonstrate that the defendant is acting with intent to defraud. Fraud is not lightly inferred, and the moving papers must contain evidentiary facts — as opposed to conclusions — proving the fraud." *Brastex Corp. v. Allen Int'l, Inc.*, 702 F.2d 326, 331-32 (2d Cir. 1983) (internal citation and quotation marks omitted).

IT IS HEREBY ORDERED that plaintiffs' *ex parte* application is DENIED without prejudice to plaintiffs renewing their application during the upcoming conference before the Court.

IT IS FURTHER ORDERED that the parties shall appear for a conference regarding plaintiffs' motion for an order of attachment on Friday, March 14, 2008, at 9:00 a.m. in the United

States District Court, Courtroom 21C, 500 Pearl Street, New York, New York. Prior to the conference, plaintiffs shall serve a copy of their motion and supporting papers on defendants and file proof of service electronically with the Court.

SO ORDERED.

DATED: New York, New York  
March 11, 2008

  
RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE